IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.432 OF 2003
IN
SUMMARY SUIT NO.2816 OF 2001

M/s.Bharat Premji Thakkar Plaintiff

versus

M/s.Anand Developers & others Defendants

Mr.Narendra Jain i/by K.C.Nagori for plaintiff.

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. Heard Mr.Jain appearing for plaintiff. He tenders affidavit proving service. Same is taken on record and marked "X" for identification. He tenders original documents along with list. They are also taken on record and marked "X-1" for identification.

2. The claim in the summary suit arises not only out of just a written agreement acknowledging liability to pay a sum of Rs.14,20,000/- received by the defendants by cheques but also on account

of dishonour of cheques in repayment forwarded by defendant. The details of the cheques advancing amounts and those by which repayment was made, are set out in the plaint. It is pointed out that the cheques on presentation have been dishonoured by the defendant's bankers on account of insufficient funds. It is pointed out that the payment was demanded thereafter but since there was no response, an advocate's notice was sent. The defendant failed and neglected to pay the amount with interest. The claim of interest is @ 18% p.a. on dishonour of cheques which according to the plaintiff are negotiable instruments. The claim for interest has also made in the advocate's notice. There is no reply thereto. Since the cheques have been forwarded and have been presented for payment and dishonoured in 1999, the present suit filed on 18th June 2001 is not barred by limitation. I am satisfied that the claim is maintainable under Order XXXVII of the CPC..

3. In the light of the above, there will be a decree as prayed. Refund of court fees and computation of advocate's costs as per rules. Mr.Jain requests for return of original documents as the same are required for prosecution of

criminal proceedings. The request is granted. Office to allow the plaintiff to take back the original documents on the plaintiff furnishing certified true copies thereof. Mr.Jain brings to my notice an order passed by brother Deshmukh, J. on Notice of Motion praying for attachment of properties. Defendants were directed to furnish security of Rs.14.00 lakh to the satisfaction of Prothonotary and Senior Master of this Court failing which the property described in Schedule of the Notice of Motion No.1542 of 2004 was to stand attached. An injunction order also granted till furnishing of security. Mr.Jain points out that the order passed on Notice of Motion No.1542 of 2004 grants two weeks to furnish security. That time has already expired, therefore, the property being non agricultural land admeasuring 5,700 sq. mtrs. bearing Survey No.2A, Hissa No.34, lying being and situate at Mouje Purna Village, Tal.Bhivandi, Dist. Thane in the registration Sub District and District of Thane belonging to the defendant no.1 firm is attached. He submits that now the decree is passed, the said attachment should continue. Order of attachment passed by this Court to continue during execution of the decree.

(S.C.DHARMADHIKARI, J.)